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CORRESPONDENCE.

PROCEEDING BY MOTION UNDER THE RECENT AMENDMENT (SECTION 3211,
AMENDED BY ACTS 1895-6, P. 140.)

Editor Virginia Law Register:

The article on the above subject by Mr. Gwathmey and the note of the Associate Editor in the 2 VIRGINIA LAW REGISTER, 647, seem to call for some reply. The amendment was drafted by me and the only change made by the legislature is the very excellent one offered by Mr. W. P. McCrae relating to affidavits.

What necessity was there for the amendment? The former requirement of ten days' return of notice to clerk's office before the term, under section 3211, had precluded the use of this convenient form of action in many cases in the cities, where the terms last for several months.

The object of the amendment was to allow the proceedings by motion to be commenced and docketed during these long terms. Has the end been accomplished?

A single instance will serve as an answer. The Law and Equity Court of the city of Richmond is one of the busiest and hardest-worked courts in the State.

Before the amendment *less than three per cent.* of all the suits were by motion. Now *more than fifty per cent.* of them are by motion.

Why should there have been any reference to section 3378? Because it is the general statute relating to dockets, and because the amendment would have been incomplete without such reference. Presume the instance of notice for motion being given in vacation. If there had been no reference to section 3378, and the suggestion to have it read "*and after such fifteen days' notice the motion shall be docketed*" had been adopted, what result would follow? The clerk has not made out his docket during a great part of vacation, therefore that provision of the amendment could not be followed under such conditions. Would not the very object of the amendment, viz.: to render more useful the action by motion, be defeated when opposing counsel urged that such direction to the clerk was mandatory, and had not been obeyed by him? If the notice of motion should be given, and fifteen days elapse during vacation, the motion is docketed under section 3378. If it is given or matures during the term it is docketed under section 3211, as amended by Acts 1895-6, p. 140.

Why should the "notice be returned to the clerk's office of such court within five days after services of the same?" This provision you object to and can see no necessity for it. Where would you have it returned?

Is it not orderly and proper to have it come to the clerk? Under all circumstances a defendant in an action is allowed fifteen days' notice. If no time had been specified the sheriff might have returned a large number of notices on the very last day, thereby greatly inconveniencing the clerk. It was a question of determining the specific time in which the sheriff should serve the notice and in which the clerk should arrange the papers and do the docketing; and again it was more

convenient to lawyers to have the original papers for at least ten days before docketing in the clerk's office; again, the object was to afford a quick method of obtaining judgment by specifically stating what time the clerk and the sheriff were allowed in which to do their respective duty. In practice it works well, and neither clerk nor sheriff is complaining.

The objections urged are not new; and certainly the judges here have unhesitatingly overruled them; and, judging from the great rapidity with which this form of action is being adopted by the lawyers, it would seem that the bench and the bar are as one on the question.

If you could see for yourself the happy relief which the amendment has afforded litigants in our crowded city courts, possibly you would modify your views about "Code tinkers."

WM. O. SKELTON.

Richmond, Va.

NOTE: The foregoing reply to our note to Mr. Gwathmey's article in 2 VIRGINIA LAW REGISTER, 647, originally contained some language quite as caustic as that used, inadvertently, by us. Upon our frank confession of regret that our note had given offense, Mr. Skelton cheerfully and promptly revised his article.

W. M. L.